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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1956

No. 456

FLORENCE ALICE PAQUET,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit.

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PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit.

Petitioner, Florence Alice Paquet, respectfully prays for a writ of certiorari directed to the United States Court of Appeals for the Ninth Circuit to review its final judgment, entered July 10, 1956, affirming the judgment of the United States District Court for the District of Hawaii.

OPINION BELOW.

The opinion of the Court below does not as yet appear in the official or unofficial reports, but is contained in the record heretofore forwarded to this Court by the Clerk of the Court below, and is to be found on pages 154 to 161 (inclusive) thereof. The judgment appears on page 162.

Said opinion and judgment also appear in Appendix I hereto.

JURISDICTION.

The judgment sought to be reviewed is dated July 10, 1956 and was entered the same day.

An order denying the petition for rehearing was rendered August 23, 1956.

Petitioner believes that jurisdiction to review said judgment is conferred by 62 Stat. 928; 28 U.S.C.A. Section 1254(1).

QUESTIONS PRESENTED FOR REVIEW.

I.

In considering the question of admitting Exhibit 1 to show nonexistence of defendant's naturalization record was it proper to depart from the provisions of Rule 44b of the Rules of Federal Procedure?

II.

Can there be a conviction of an accused in a criminal case in a United States District Court upon an uncorroborated confession?

SUMMARY STATEMENT OF MATTER INVOLVED.

Involved in this matter, in addition to failure of the courts below to follow the decision of this Court, are:

1. *Federal Rule of Criminal Procedure 27* which provides,

> An official record or entry therein or the lack of such a record may be proved in the same manner as in civil actions.

2. *Federal Rule of Civil Procedure 44(a)* which provides,

> An official record or entry therein when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record or by his deputy and accompanied with a certificate that such officer has the custody.

3. *Federal Rule of Civil Procedure 44(b)* which provides,

> A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office accompanied by a certificate as above provided (Rule 44(a)) is admissible as evidence that the records of his office contain no such record or entry.

Federal Rules of Civil Procedure 44(c) provides,

> This rule (44b) does not prevent the proof of official records or of entry or of lack of entry

therein by any method authorized by an applicable statute or by the rules of evidence at common law.

4. *Code of Federal Regulations, Volume 22, Section 1.1,* which reads,

"An officer or employee of the Department of State designated as Authentication Officer or as an Acting Authentication Officer of said Department may, and he is hereby authorized to, sign and issue certificates of authentication under the seal of the Department of State for and in the name of the Secretary of State or Acting Secretary of State. The form of authentication shall be as follows:

In testimony whereof ....., Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the City of Washington, in the District of Columbia, this ..... day of ....., 19.....

.....
Secretary of State

By.....
Authentication Officer
Department of State"

STATEMENT OF THE CASE.

To support the allegations of the indictment, namely: that on or about August 16, 1954, and again on or about March 30, 1955, appellant made false statements as to her place of birth and falsely repre-

sented herself to be a citizen of the United States (R. pp. 3 and 4), there were offered, and received, in evidence the following exhibits:

Exhibit No. 1: Certificate of nonexistence of citizenship record.

Exhibit No. 2: Purporting to be a photostat copy of application for passport dated August 17, 1954.

Exhibit No. 3: Application for passport dated August 17, 1954.

Exhibit No. 4: United States Passport.

Exhibit No. 5: Canadian Passport.

Exhibit No. 6: Statement of Florence Alice Paquet (appellant).

Objection was made and overruled as each of the foregoing exhibits was offered in evidence. Later the appellant moved to strike them (R. pp. 123-127). The motions were denied in each instance.

Trial by jury in the United States District Court for the District of Hawaii resulted in the conviction of petitioner who appealed to the United States Court of Appeals for the Ninth Circuit which Court affirmed the judgment of the trial Court.

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

1. The Court of Appeals has decided an important question of federal law, to wit: the manner of seeking a conviction in a criminal case involving federal rec-

ords and lack thereof, which has not been, but should be, settled by this Court.

2. The Court of Appeals has decided the federal question relating to self-crimination by way of admissions or confessions in conflict with applicable decisions of this Court, including *Opper v. United States,* 348 U.S. 84, and *Warzower v. United States,* 159 U.S. 487.

PRAYER.

Wherefore, petitioner respectfully prays that a writ of certiorari be issued to the United States Court of Appeals for the Ninth Circuit and that the final judgment of said Court be reviewed and reversed.

Dated, Honolulu, Hawaii,
September 19, 1956.

O. P. SOARES,
Counsel for Petitioner.

(Appendix Follows.)

Appendix

United States Court of Appeals
for the Ninth Circuit

No. 14,915 July 10, 1956

Florence Alice Paquet,
Appellant,
vs.
United States of America,
Appellee.

Appeal from the United States District Court
for the District of Hawaii

Before: Denman, Chief Judge, Chambers, Circuit Judge and Tolin, District Judge

Denman, Chief Judge:

Florence Alice Paquet appeals from her convictions in the United States District Court for the District of Hawaii of making false statements in applying for a United States passport,[1] unlawfully using such a

[1] 18 U.S.C. §1542 provides punishment for:
"Whoever willfully and knowingly makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws;"

passport secured by a false statement,[2] and falsely representing herself on two different occasions to be a United States citizen.[3] She contends that her convictions were based on a confession which was coerced from her, and that the confession was improperly admitted into evidence without corroboration. Since the prison sentences on the four counts are concurrent and only the first and second had added fines of $250.00 in each, it is sufficient that we hold that the first two sentences are valid. Cohen v. United States, 201 F. 2d 386, 389 (Cir. 9, 1953).

I. *Appellant's Confession of Violating both the First and Second Counts was not Shown to be Coerced.*

Appellant contends that her convictions for fraudulently obtaining and then unlawfully using the passport were based on a confession which was coerced from her by use of psychological pressure. She claims she did not have that "mental freedom" which the Supreme Court has said a defendant must possess to make a confession admissible.[4]

The record fails to support such an assertion. The Immigration and Naturalization Service inspector

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[2]18 U.S.C. §1542 also penalizes:

"Whoever willfully and knowingly uses . . . any passport the issue of which was secured in any way by reason of any false statement . . ."

[3]18 U.S.C. §911 provides:

"Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined not more than $1,000 or imprisoned not more than three years, or both."

[4]She relies on Ashcraft v. Tennessee, 322 U.S. 143 (1943); Lyons v. Oklahoma, 322 U.S. 596 (1944). Cf. Ziang Sung Wan v. United States, 266 U.S. 1 (1924).

who obtained her confession testified that after questioning appellant at her home he asked her to accompany him to the Immigration Office to make a formal statement which she agreed to do. From that point on he considered her in his custody. Upon arrival at the office, appellant was advised of her constitutional rights, and she was asked if she was acting voluntarily. She replied that she was, and a statement was taken from her. The investigator testified that he had neither promised appellant immunity nor made use of threats or force. He denied telling her that her crime was worse than murder in that it was subject to two punishments—a prison term and deportation. He stated that he had not discussed the enormity of the offense in any respect, but that he "possibly did mention that if she was an alien she might be subject to deportation." The warrant for appellant's arrest was served shortly after she had signed her statement.

The mere fact the confession was made while in the custody of the Bureau of Immigration and Naturalization investigator does not render it inadmissible.[5] The record shows no use of threats or psychological pressure. As was said in United States v. Mitchell, 322 U.S. 65, 70 (1944):

> "Here there was no disclosure induced by illegal detention . . . but instead the prompt acknowledgment by an accused of . . . [her] . . . guilt, and the subsequent rueing apparently of such spontaneous cooperation and concession of guilt."

[5]McNabb v. United States, 318 U.S. 332 (1943); United States v. Mitchell, 322 U.S. 65 (1944).

II. *Appellant's Admissions that she made False Statement to Secure her Passport are Corroborated.*

Her confession on this count was as follows: She had altered her cousin's certificate of baptism from the Church of St. Monica in Barre, Vermont, to describe herself. She had presented this document to those in charge of issuing passports in Honolulu and represented herself in written applications for a passport as a United States citizen by virtue of her birth in Vermont. She stated this and also stated that in fact she was born in Canada and had never become a United States citizen. She had obtained a United States passport and had used it to travel to and from Hawaii to Guam.

The Government introduced the following documents to corroborate the confession of this crime of making false statements to passport authorities, namely, two duplicate original copies or appellant's application for a passport, Exhibits 2 and 3, in which she stated she was born in Barre, Vermont, her American passport, Exhibit 4, and her Canadian passport, Exhibit 5, which states that she was born in Inverness, Canada.

Appellant argues that each of these documents is inadmissible, and consequently her confession was uncorroborated. She contends first that the two duplicate original copies of her application for a United States passport were erroneously admitted since they were not accompanied by a certificate that "the officer from whose custody they purport to come, has the custody thereof." Such a certificate is required by

F.R.C.P. 44(a)[6] which is made applicable to criminal cases by F.R.Crim.P. 27.[7]

However, F.R.C.P. 44(c) provides:

> "This rule does not prevent the proof of official records or of entry or of lack of entry therein by any method authorized by any applicable statute or by the rules of evidence at common law."

Both of these documents were admissible under such other methods. Exhibit No. 2 is a photographic copy of appellant's application with a certificate of baptism from the Church of St. Monica, Barre, Vermont, attached. Bound to this exhibit is an authentication by the Authentication Officer of the Department of State which certifies that "the documents hereto annexed are true copies from the files of this Department." Under 28 U.S.C. Section 1733(b)[8] such a copy of a document on file with a department is admissible if "properly authenticated". The Secretary of State is given power to make regulations concerning the records of his department and the conduct of its

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[6]This rule provides: "An official record or an entry therein when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record or by his deputy and accompanied with a certificate that such officer has the custody."

[7]F.R.Crim.P. 27 provides: "An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions."

[8]Section 1733(b) provides:

"Properly authenticated copies or transcripts of any books, records, papers or documents of any department or agency of the United States shall be admitted in evidence equally with the originals thereof."

officers under 5 U.S.C. Section 22.[9] A regulation providing for the authentication of documents by the Authentication Officer of the Department of State in exactly the terms found on Exhibit No. 2 is contained in 22 C.F.R. Section 1.1.[10] Such an authentication is "proper" and this exhibit was admissible under Section 1733(b).

Exhibit No. 3 is one of the applications for a passport filled out by appellant. It was admissible "by the rules of evidence at common law."[11] It was identified by the Deputy Clerk of the United States District Court for the District of Hawaii before whom appellant took the required oath of allegiance and signed the application and by the Hawaiian Passport Administrator to whom appellant presented it to

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[9]Section 22 provides:

"The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers and property appertaining to it."

[10]22 C.F.R. §1.1 provides:

"An officer or employee of the Department of State designated as Authentication Officer or as an Acting Authentication Officer of said Department may and he is hereby authorized to, sign and issue certificates of authentication under the seal of the Department of State for and in the name of the Secretary of State or Acting Secretary of State. The form of authentication shall be as follows:

In testimony whereof, ..., Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the City of Washington, in the District of Columbia, This ..... day of ....., 19.....

.....
Secretary of State

By .....
Authentication Officer
Department of State"

[11]Wigmore, Evidence, §§666, 2131, 2148-2154 (3d ed., 1940).

obtain a passport. Both linked the document with appellant, and there is no question that it is relevant and material.

Appellant next argues that her American and Canadian passports should have been excluded by the District Court. She asserts that they "were taken from . . . [her] . . . while she was unlawfully in custody under circumstances which were in violation of her rights under the Constitution to be secure in the possession of her papers and against self crimination." She claims that an investigator of the Bureau of Immigration and Naturalization while questioning her at her home in Honolulu obtained the two passports "under pressure".

The record does not bear out the contention that the passports were obtained in such a way as to violate the Fourth Amendment.[12] The investigator who obtained the passports described the interview at appellant's home where he obtained the *American* passport. He asked appellant whether she had an American passport. She replied that she did not. He stated he had been told she had presented one at the airport upon her arrival from Guam that morning. She said she had destroyed it en route from the airport. He asked her when and where she destroyed it, in his words, "I first asked her as to when and

[12]"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized." United States Const. Amend. IV.

where, *pressed the issue as to when, where . . .*" [Emphasis added.] Without answering his questions appellant walked to her handbag, took out the passport, and gave it to him. He denied telling her that "it would be tough for her if she couldn't produce it." The investigator testified that the day after his visit to appellant's home she gave him her *Canadian* passport. She was under arrest at the time.

Undoubtedly a situation could arise where, because of coercion, a person became the unwilling instrument of an illegal search and seizure of his own property by a law enforcement officer.[13] However, appellant has failed to show that such a thing occurred. The investigator's statement that he "pressed the issue" as to when and where she destroyed her American passport does not establish this. As far as the record indicates, appellant was free to refuse to answer these questions and keep the whereabouts of her passport secret.

The record, as described above, also fails to establish an infringement of the Fifth Amendment privilege against self-incrimination. That privilege is expressed in the Bill of Rights as follows:

> "No person . . . shall be *compelled* in any criminal case to be a witness against himself . . ." [Emphasis added.][14]

Appellant has failed to show that she was "compelled" to hand over her passport. Those who would

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[13]Cf. Ray v. United States, 84 F.2d 654 (Cir. 5, 1936); United States v. Abrams, 230 Fed. 313 (D. Vt., 1916).

[14]United States Const. Amend. V.

extend the privilege against self-incrimination from the courtroom to the police station place reliance on the compulsion to make statements to which a person is necessarily subjected while in police custody.[15] Even assuming the privilege is applicable beyond the courtroom,[16] there is no reason to extend it to cases where one being questioned in her own living room voluntarily hands over documents.

Appellant contends that, absent the confession, these documents do not establish the corpus delicti, and that only by such proof can the confession be corroborated. We do not agree. The extent of corroboration necessary has been recently discussed by the Supreme Court in Opper v. United States, 348 U.S. 84, 93 (1954), as follows:

> ". . . we think the better rule to be that the corroborative evidence need not be sufficient, independent of the statements, to establish the *corpus delicti*. It is necessary, therefore, to require the Government to introduce substantial independent evidence which would tend to establish the trustworthiness of the statement. Thus, the independent evidence serves a dual function. It tends to make the admission reliable, thus corroborating it while also establishing independ-

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[15]See Bram v. United States, 168 U.S. 532 (1897); McNabb v. United States, 318 U.S. 332, 347 (1942) (Reed, J., dissenting); Rochin v. California, 342 U.S. 165, 174, 177 (1952) (Black and Douglas, J. concurring); Bullock v. United States, 122 F.2d 213, 215 (D.C. Cir. 1941); Note, The Privilege Against Self-Incrimination: Does It Exist in the Police Station? 5 Stanford L. Rev. 459 (1953).

[16]Cf. 3 Wigmore, Evidence §821 n. 2, §823 n. 5, §832 n. 1, §865 n. 12, §898 n. 1 (3d ed., 1940); Wood v. United States, 128 F.2d 265, 270 (D.C. Cir. 1942).

> ently the other necessary elements of the offense . . . It is sufficient if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth. Those facts plus the other evidence besides the admission must, of course, be sufficient to find guilt beyond a reasonable doubt."

Here the corroboration established appellant had applied for a United States passport stating she was born in Barre, Vermont, and thereby representing that she was a United States citizen. Her Canadian passport stated that she was born in Inverness, Canada. This evidence "supports the essential facts admitted sufficiently to justify a jury inference of their truth." Certainly a jury could infer that the Canadian passport stated her actual birthplace, and that her representation as to her birthplace in Vermont was false.

As to the second offense of willfully using a passport secured by her false statements, her confession is corroborated by the testimony of James P. Keane, an inspector of the United States Immigration Service at Hawaii, to whom she there presented the passport to Guam.

The confession was not shown to be coerced, and it was sufficiently corroborated. The judgments on the first and second counts are affirmed.

(Endorsed:) Opinion. Filed, July 10, 1956. Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

No. 14,915

Florence Alice Paquet,	Appellant,
vs.	
United States of America,	Appellee.

JUDGMENT

Appeal from the United States District Court for the District of Hawaii.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Hawaii, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed.

(Endorsed:) Judgment. Filed and Entered: July 10, 1956. Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of
Thursday, August 23, 1956

Before: Denman, Chief Judge, Chambers, Circuit Judge, and Tolin, District Judge.

ORDER DENYING PETITION FOR REHEARING

On consideration thereof, and by direction of the Court, It Is Ordered that the petition of Appellant, filed August 6, 1956, and within time allowed therefor by rule of Court for a rehearing of the above cause be, and hereby is denied.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 456

FLORENCE ALICE PAQUET, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. App. 1–10; R. 154–161) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals (R. 162; Pet. App. 11) was entered on July 10, 1956. A petition for rehearing was denied on August 23, 1956 (R. 163; Pet. App. 12). On September 22, 1956, a telegraphic request was received by this Court requesting a five-day extension of the time for filing a petition for a writ of certiorari and on September 24, 1956, Mr. Justice Douglas granted the extension

to September 27, 1956. The petition was filed on September 26, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether petitioner's confession was properly corroborated.

2. Whether the corroborative official documents were admissible in evidence.

STATUTES, REGULATIONS, AND RULES INVOLVED

18 U. S. C. 911 provides:

> Whoever falsely and willfully represents himself to be a citizen of the United States shall be fined not more than $1,000 or imprisoned not more than three years, or both.

18 U. S. C. 1542 provides:

> Whoever willfully and knowingly makes any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws; or
>
> Whoever willfully and knowingly uses or attempts to use, or furnishes to another for use any passport the issue of which was secured in any way by reason of any false statement—
>
> Shall be fined not more than $2,000 or imprisoned not more than five years, or both.

The Act of June 27, 1952, Section 290 (d), 66 Stat. 234, 8 U. S. C. 1360 (d) provides:

* * * * *

(d) A written certification signed by the Attorney General or any officer of the Service designated by the Attorney General to make such certification, that after diligent search no record or entry of a specified nature is found to exist in the records of the Service, shall be admissible as evidence in any proceeding as evidence that the records of the Service contain no such record or entry, and shall have the same effect as the testimony of a witness given in open court.

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28 U. S. C. 1733 (b) provides:

* * * * *

(b) Properly authenticated copies or transcripts of any books, records, papers or documents of any department or agency of the United States shall be admitted in evidence equally with the originals thereof.

R. S. Sec. 161, 5 U. S. C. 22, provides:

The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers, and property appertaining to it.

8 C. F. R. 2.2 provides:

Certification of nonexistence of record. The chief of the Records Administration Branch of the Central Office may certify the nonexistence in the records of the Service of an official file, document, or record pertaining to a specified person or subject.

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22 C. F. R., Section 1.1 provides:

An officer or employee of the Department of State designated as Authentication Officer or as an Acting Authentication Officer of the said Department may, and he is hereby authorized to, sign and issue certificates of authentication under the seal of the Department of State for and in the name of the Secretary of State or Acting Secretary of State. * * *

Rule 27, F. R. Crim. P., provides:

An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.

Rule 44, F. R. Civ. P., provides:

(a) *Authentication of copy.*

An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication therof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has the custody. If the office in which the

record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office.

(b) *Proof of lack of record.*

A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry.

(c) *Other proof.*

This rule does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute or by the rules of evidence at common law.

STATEMENT

In the United States District Court for the District of Hawaii, petitioner was convicted by a jury (R. 7–8) on all counts of a four count indictment (R. 3–5) charging that she knowingly made a false statement in her application for a passport, knowingly used the passport secured by reason of the false statement (both acts in violation of 18 U. S. C. 1542), and that she knowingly and falsely represented herself to be a United States citizen on two occasions, in violation of 18 U. S. C. 911. She was sentenced to eighteen months' imprisonment on each of the four counts, the terms to run concurrently, and was fined two hundred and fifty dollars on each of the first two counts (R. 9). In view of the concurrent sentences, the Court of Appeals, in affirming the judgment, considered only the convictions on the first two counts (R. 155; Pet. App. 2).

Petitioner contends that her confession was not corroborated and that the government did not properly prove that she had never been naturalized. The record on these issues may be summarized as follows:

In her written confession (R. 111–120) petitioner stated that she was a Canadian, not a United States citizen, who had been admitted to the United States in 1948 as a permanent resident alien (R. 113–114); that to secure a United States passport to go to Guam she submitted the baptismal record of her namesake, a cousin born in Vermont (R. 116), altering the recorded year of birth to make the age more closely correspond to her own (R. 118). She admitted that

she secured the passport by knowing misrepresentation of birth in United States (R. 117, 118). On her departure from Guam and on her arrival in Honolulu on March 30, 1955, she used the passport to represent herself as a United States citizen (R. 119).

A deputy clerk of the District Court for the District of Hawaii identified a copy and a duplicate original (Exhibits 2 and 3) of the application for a passport which petitioner submitted to him on August 16, 1954, signing and swearing to it in his presence (R. 22, 23, 25, 26). These exhibits, entitled "Passport Application Form for Native Citizen", contained petitioner's statement that she was a United States citizen (R. 39, 40), her photograph, and documentary evidence of her birth in the form of a certificate of baptism (R. 23–26). Both exhibits were certified by the authentication officer of the Department of State "to be from their files" (R. 21, 157; Pet. App. 5). The passport administrator of the Governor's office testified that she issued the passport after examining the certificate of baptism, submitted with the application (R. 51–53, 59, 60, 62).

An inspector of the Immigration and Naturalization Service testified that he met petitioner when she deplaned at Honolulu Airport on the morning of March 30, 1955, that she presented to him her passport which showed her place of birth as Barre, Vermont, and that she stated that she was born there (R. 67–70, 73). The inspector returned petitioner's passport to her and admitted her (R. 68). An investigator of the Immigration and Naturalization Service testi-

fied that he visited petitioner later that morning at her residence and, after identifying himself, questioned her (R. 75, 76, 82, 83).[1] She told him that she had arrived that morning and that she had destroyed her United States passport on the way from the airport, but on further questioning she took the passport from her handbag and handed it to him (R. 82–84). She told him that she was a native Canadian citizen (R. 84). On his request, petitioner agreed to go with him to the local Immigration and Naturalization Service office to give a formal statement (R. 84). After being advised of her constitutional rights, she gave her formal statement (R. 98, 105). The investigator also testified that, on the following day, petitioner presented to him a Canadian passport issued in her name (R. 79, 80) which was introduced into evidence as Exhibit 5. It showed that petitioner's place of birth was Inverness, Canada.

Over petitioner's objection, the government introduced in evidence (R. 20, 30) a certificate by the Chief Officer of the Records Administration and Information Branch of the Immigration and Naturalization Service certifying to the nonexistence of a citizenship record of petitioner (Exhibit 1).

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[1] The testimony of the investigator with respect to his interview with petitioner on the day of her arrival was brought out by petitioner's attorney on *voir dire* permitted by the court to determine whether, as petitioner contended, a Canadian passport which petitioner gave to the investigator on the day after her arrival had been obtained from her by duress.

ARGUMENT

1. There is no substance to petitioner's contention that her confession was not properly corroborated under the test laid down by this Court in *Opper* v. *United States,* 348 U. S. 84.

All the essential facts admitted in the confession were supported by corroborating evidence. The fact that petitioner was not a citizen was shown by her Canadian passport (Exhibit 5) and by the statement of the nonexistence of any United States naturalization record. That she falsely stated that she was a citizen, in her application for a passport, was proved by a copy and duplicate original of the application itself, in which she swore to her American citizenship, and attached a baptismal certificate purporting to show her birth in the United States. The passport itself was also introduced in evidence. Her use of the falsely obtained passport was directly proved by the immigration inspector to whom she presented it on her arrival at Honolulu.

This same evidence of her application for the passport and her use of it is corroborative on the other two charges of falsely representing herself to be a citizen of the United States.

2. Petitioner appears to contend that the corroborating evidence was inadmissible. With respect to the copy of the application for a passport, Rule 44, F. R. Civ. P. (made applicable to criminal cases by Rule 27, F. R. Crim. P.), in addition to its provi-

sion for a certificate that "the officer from whose custody they purport to come, has the custody thereof," allows proof of official records "by any method authorized by any applicable statute * * *." 28 U. S. C. 1733 (b) provides that "properly authenticated copies * * * of any * * * records, papers or documents of any * * * agency of the United States shall be admitted in evidence equally with the originals thereof." Under the authority of R. S. Section 161, 5 U. S. C. 22, the Secretary of State has issued a regulation providing for the authentication of documents by the Authentication Officer of the Department of State, 22 C. F. R. 1.1, which was apparently the method used here (R. 21, 157). Thus, as the Court of Appeals noted, the authentication was proper and the photostatic copy of the application was admissible.

Exhibit 3, one of the applications for a passport filled out by petitioner, was also admissible under Rule 44 (c) which allows proof by "the rules of evidence at common law", since direct testimony of submission of the document by petitioner was given by the court clerk and the passport administrator.

Petitioner's contention that the certification as to the non-existence of a naturalization record (Exhibit 1) was inadmissible, because not in accordance with Rule 44, is equally without merit. As noted, Rule 44 (c) provides as an alternative method of proof "any method authorized by any applicable statute." Section 290 (d) of the Immigration and Nationality Act of June 27, 1952, 66 Stat. 234, 8 U. S. C. 1360 (d), provides that:

> (d) A written certification signed by the Attorney General or by any officer of the Service designated by the Attorney General to make such certification, that after diligent search no record or entry of a specified nature is found to exist in the records of the Service, shall be admissible as evidence in any proceeding as evidence that the records of the Service contain no such record or entry, and shall have the same effect as the testimony of a witness given in open court.

Pursuant to this statute, 8 C. F. R. 2.2 provides:

> *Certification of nonexistence of record.* The chief of the Records Administration Branch of the Central Office may certify the nonexistence in the records of the Service of an official file, document, or record pertaining to a specific person or subject.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER 1956.

U. S. GOVERNMENT PRINTING OFFICE: 1956